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303 NLRB No. 121

V--2121
Maplewood, MN

~~UNITED~~ STATES OF AMERICA

BEFORE ~~THE NATIONAL LABOR~~ RELATIONS BOARD

SEARS, ROEBUCK & COMPANY

and

Case 18--CA--11676

UNITED STEELWORKERS OF AMERICA,
AFL--CIO, CLC

July 22, 1991

DECISION AND ORDER

By Chairman Stephens and Members Devaney and Oviatt

On April 18, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 18--RC--14736. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On June 6, 1991, the General Counsel filed a Motion to Strike Part of Respondent's Answer and for Summary Judgment. On June 11, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On July 2, 1991, the Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer, the Respondent denies all of the nonjurisdictional allegations of the complaint except for the allegations that it filed timely objections to the election in the underlying representation proceeding, and that the Board subsequently denied its request for review of the Regional Director's Supplemental Decision and Certification of Representative. Thus, in addition to denying the various legal allegations of the complaint, the Respondent also denies, among other things, that an election was conducted; that a revised tally of ballots issued reflecting that a majority of the unit had selected the Union as their representative; that the Union on or about March 5, 1991, requested the Respondent to recognize and bargain with it; and that the Respondent on or about March 14, 1991, refused to do so.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See Pittsburgh Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941).

Nor do we find that any of the other issues raised by the Respondent warrant a hearing. Thus, although as indicated above the Respondent's answer denies several of the factual allegations in the complaint, the Respondent in its response to the Notice to Show Cause has not challenged or disputed the authenticity of any of the documentary evidence attached to the General Counsel's motion (including the Union's March 5, 1991 letter requesting recognition and bargaining, and the Respondent's own March 14, 1991 letter

refusing to do so) which establishes to the contrary. Rather, the Respondent merely reiterates its objections to the election in the underlying representation case. Accordingly, we grant the Motion for Summary Judgment.[1]

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Respondent, a New York corporation with its headquarters in Chicago, Illinois, operates a retail sales facility in Maplewood, Minnesota. During the calendar year ending December 31, 1990, the Respondent in the course and conduct of its business operations derived gross revenues in excess of $1 million and purchased and received at its Maplewood, Minnesota facility products, goods, and materials valued in excess of $50,000 directly from points outside the State of Minnesota. The Respondent admits, and we find, that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held June 1, 1990, the Union was certified on September 17, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Category 700-8 employees employed in the Employer's Maplewood Mall, Maplewood, Minnesota facility, including greeters, cashiers, service advisors, dispatchers, service technicians, mechanics and battery and parts room attendants, and automotive floor sales employees; excluding sporting goods division employees, guards and supervisors as defined in the Act, and all other employees.

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[1] Inasmuch as we are granting the Motion for Summary Judgment, we find it unnecessary to rule on the motion to strike portions of the Respondent's answer.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since on or about March 5, 1991, the Union has requested the Respondent to bargain, and, since on or about March 14, 1991, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after March 14, 1991, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Sears, Roebuck & Company, Maplewood Mall, Maplewood, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Steelworkers of America, AFL--CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time and regular part-time Category 700-8 employees employed in the Employer's Maplewood Mall, Maplewood, Minnesota facility, including greeters, cashiers, service advisors, dispatchers, service technicians, mechanics and battery and parts room attendants, and automotive floor sales employees; excluding sporting goods division employees, guards and supervisors as defined in the Act, and all other employees.

(b) Post at its facility at the Maplewood Mall in Maplewood, Minnesota, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by

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[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. July 22, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

Clifford R. Oviatt, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Steelworkers of America, AFL--CIO, CLC, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All full-time and regular part-time Category 700-8 employees employed in the Employer's Maplewood Mall, Maplewood, Minnesota facility, including greeters, cashiers, service advisors, dispatchers, service technicians, mechanics and battery and parts room attendants, and automotive floor sales employees; excluding sporting goods division employees, guards and supervisors as defined in the Act, and all other employees.

SEARS ROEBUCK & COMPANY

(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 110 South 4th Street, Room 316, Minneapolis, Minnesota 55401-2291, Telephone 612--348--1793.